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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 935

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, ET AL., *Petitioners*,

v.

CERTAIN CARRIERS REPRESENTED BY THE EASTERN, WESTERN, AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES, CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, ET AL., *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

APPENDICES TO RESPONDENT CARRIERS' BRIEF IN OPPOSITION

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APPENDIX I

BEFORE THE

ARBITRATION BOARD

Established by Joint Resolution of Congress
Approved August 28, 1963

Public Law 88-108

National Mediation Board

Arbitration Board No. 282

CERTAIN CARRIERS REPRESENTED BY THE EASTERN, WESTERN, AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES

and

CERTAIN OF THEIR EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, BROTHERHOOD OF RAILROAD TRAINMEN, AND THE SWITCHMEN'S UNION OF NORTH AMERICA

Opinion of the Neutral Members

We write this opinion as the neutral members of a statutory arbitration board—a board whose creation was virtually forced upon Congress as the only way of avoiding a nationwide railroad strike. Never before in peacetime has Congress found it necessary to take such action. We wish at the very outset to record our regret that in this case the leaders of the railroad industry and the railroad operating unions were unable to agree upon some method of resolving their differences which would avoid the need for Congressional intervention. The great virtue of arbitra-

tion as it has developed in this country's labor relations has been the fact that it was a *voluntary* procedure, created and shaped by the disputing companies and unions themselves and thus responsive to their peculiar problems, values, and needs. It is unfortunate that the parties in this case, though finally agreeing in principle to arbitration, failed to agree upon the terms and procedures of an arbitration agreement and thereby abandoned to Congress an opportunity and responsibility that should rightly have been theirs.

We have been asked to decide only two of the issues which separate the parties: the so-called "fireman (helper)" issue and the so-called "crew consist" issue. It is the evident hope of Congress that once these two issues have been settled, agreement on the remaining issues can be reached in direct collective bargaining. All citizens must join in the hope that failures of leadership—on either side—will not again make it necessary for the Government to do for the parties what the parties should do for themselves.

Preliminary Comments

Both of the issues before us concern manning and the effect on manning of technological progress and change. In view of the present national concern with such questions—with problems of automation and unemployment—the limitations under which we must deal with these issues should immediately be made clear. We are an arbitration board, established to settle two particular points of controversy in a specific labor dispute. Though our authority comes from Congress, the issues we must decide were framed by the parties, and the scope of our action cannot exceed the scope of the actions which the parties themselves might have taken with respect to these issues had they been able to reach agreement. There are many questions of general social policy, community action, or legisla-

tion which bear on the problems before us, but they are not within our purview.

In approaching our task we have been fully aware of the handicaps imposed upon us not only by our relative unfamiliarity with the complex problems of railroad operation but also by the narrow time limits within which we have been compelled by the Joint Resolution to complete our work. We have had to base our judgments entirely upon the evidence and arguments presented to us by the parties in the formal context of adversary proceedings. Our brief personal inspection of a few representative types of diesel switching operations permitted us only to gain a better understanding of what the parties were telling us. These difficulties, however, only underscore the gravity and importance of our task; they cannot relieve us of our obligations.

The issues in this case involve an obvious distinction between questions concerning *jobs* and questions concerning *men*. Another distinction, however, is equally important: that between the question whether a job is unnecessary and the question whether and in what manner an unnecessary job should be eliminated. Neither the issues nor the Board's award can be understood unless these distinctions are kept in mind. In dealing with both the fireman and the crew consist issues we have established a procedure for determining whether, considering safety, workload, and adequacy of transportation service, particular jobs should be made subject to elimination. The sharpest and most stubborn disagreements have been over this procedure—over any question, indeed, that affected the number of jobs which might be declared "blankable" within a given length of time. It is important to realize, however, that *declaring a job "blankable" under the terms of the Board's award does not necessarily result in the immediate elimination of that job or the layoff of its occupant.* The Board's award makes the actual elimination of jobs subject, in most cases,

to attrition—to the vacating of jobs by the natural processes of retirement, transfer, voluntary quit, discharge, or death. The determination that a job is "blankable" will usually mean, not that an employee will be laid off, but only that, when it becomes vacant, no new employee need be hired to fill it.

The provisions of our award are explained in general terms in this opinion, without reference to certain refinements spelled out in the award. In the event of any inadvertent conflict between the explanation given in this opinion and the precise language of the award, the latter is, of course, intended to govern.

The Board's award will remain in force only two years. Within that time the effect of attrition may be such that the number of firemen or train crew jobs actually eliminated may be comparatively small. Problems that are as deeply rooted and that have been as long in development as those here involved, however, cannot be solved overnight. In this case, rapid readjustment could have a human price too great to pay. If, through this award, principles are established and procedures set in motion which contribute to a final solution, our hopes as neutral members of this Board will have been fulfilled.

The Parties and the Issues

The dispute before us involves almost all of the Nation's major railroads and the five railroad operating brotherhoods. The railroads (often referred to herein as the "carriers") are represented by the Eastern, Western, and Southeastern Carriers' Conference and by the National Railway Labor Conference. Together they conduct about ninety per cent of all railway operations in the United States. The brotherhoods (often referred to herein as the "organizations") are the Brotherhood of Locomotive Engineers (BLE), the Brotherhood of Locomotive Firemen and Enginmen (BLF&E), the Order of Railway Conduc-

tors and Brakemen (ORC&B), the Brotherhood of Railroad Trainmen (BRT), and the Switchmen's Union of North America (SUNA), the first two representing "engine service" employees and the last three "train service" employees. In all, some 200,000 employees are represented in the dispute.

The assignment, duties, and compensation of these operating employees are governed by a complex structure of rules, agreements, laws, and understandings which has developed through decades of practice and collective bargaining and which has roots running back to the turn of the century and beyond. This structure has persisted with comparatively slight adjustment, despite drastic changes in railroad technology and equipment, in the competitive position of the railroads and in the general pattern of American industry with regard to wage rules and fringe benefits. Both parties are now seeking to change and—in their own terms—"modernize" this structure. But they disagree sharply as to the nature, direction, and rate of the desired changes and as to how and by whom the price of change should be paid.

One of the central points of disagreement concerns the continued use of firemen (sometimes—and particularly in yard switching operations—referred to as "helpers")[1] on locomotives, such as diesel-electric or electric locomotives, which do not use steam power and on which the work of firing the boilers therefore need not be performed. In 1937, when the "dieselization" of railroad power was just beginning and its future was still uncertain, the carriers and the BLF&E entered into a National Diesel Agreement which, in substance and as since modified in certain details, requires the employment of a fireman on all locomotives,

[1] For the sake of simplicity and to avoid the cumbersome "fireman (helper)" locution, we will hereafter call the second member of the engine service crew a "fireman," even though the parties might sometimes call him a "helper."

whether or not they used steam power, with the exception only of certain yard switchers below a specified weight and certain electric rail cars or self-propelled rail motor cars or construction machines. This requirement remains in effect, even though "dieselization" has since swept the industry and even though there are now only a handful of steam locomotives in service. The carriers accept the continued use of firemen on passenger diesel locomotives, where there are now only two men in the cab. They assert, however, that in road freight operations, where the head brakeman is in the cab to provide left-hand lookout, and in yard switching operations, where the ground crew guides the engineer, no fireman is needed for lookout or signal-passing duties, and that the present duties of firemen in connection with the detection and correction of mechanical or electrical malfunctions can be performed—and, indeed, often *are* performed—by engineers and shop maintenance men in the normal course of their work. For some years, therefore, the carriers have been pressing for the modification of the National Diesel Agreement and the right to eliminate all firemen positions. The organizations have resisted the move, claiming that the work performed by a fireman—left-hand lookout, signal passing, engine inspection, and the correction of malfunctions—is still necessary and cannot properly be performed by other employees.

A second central point of difference concerns the make-up—or "consist"—of train service crews in road and yard service. This matter is usually regulated, not by national rule, but by a wide variety of local agreements, rules, and practices, and—in a number of states—by statute or administrative decision. It is the carriers' position that many of these regulations are out of date and fail to reflect recent developments which have lightened the workload of the train service crews, such as the decline in less-than-carload lot freight shipments; the fall-off in passenger traffic and baggage-handling work; and the spread of auto-

matic block signals, centralized traffic control systems, "hot box" detectors, radio or telephonic communication systems, and other work-saving devices. The carriers contend that because of the lack of relationship between workload and required crew size many trainmen have little or nothing to do. The carriers are pressing, therefore, for the modification or elimination of all rules or agreements that restrict their right to determine crew size. The organizations resist, claiming that modern developments such as the increased size and speed of freight trains and the competitive pressures for rapid switching and transfer operations have added to the work and responsibilities of many train crews and that, in any case, crew size is a matter for negotiation and agreement rather than unilateral determination.

History of the Dispute

The formal beginning of the dispute came on November 2, 1959, when—pursuant to Section 6 of the Railway Labor Act—the carriers served the organizations with notices of proposed changes in many work and compensation rules, including those bearing on the fireman and crew consist issues, just discussed. With regard to the "Use of Firemen (Helpers) on Other Than Steam Power," the carriers proposed the elimination of all regulations—including, of course, the National Diesel Agreement—which required the employment of firemen on other than steam power in any class of freight or yard service. They do *not*, it must be emphasized, propose the elimination of such regulations in passenger service. They also proposed a new national rule which would give management the unrestricted right to decide when and if a fireman should be used in freight and yard service. With regard to the "Consist of Road and Yard Crews," the carriers proposed the elimination of all regulations, however established, applicable to the consist of crews in road or yard service, which require: (1) a stipulated number of trainmen or more than one conductor in

any crew used in any class of road service; (2) a stipulated number of brakemen or helpers or more than one conductor or foreman in any crew used in any class of yard, transfer, or belt line service; or (3) a conductor or trainman in connection with the movement of light engines or in pusher or helper service, or an engineer, conductor, or trainman in pilot service.

Counter-proposals were submitted by the organizations on September 7, 1960. Under the heading "Minimum Safe Crew Consist" they proposed, in the first place, a new national rule which would extend the use of firemen even to those classes of locomotives, such as light switching engines or electric rail cars, on which firemen had not previously been required. In the second place, with regard to train crews, they proposed a rule which would require not less than one conductor (foreman) and two trainmen (brakemen, helpers) in all classes of train service, plus "such additional employees as are required to assure maximum safety."

It is needless, here, to give a detailed history of all the local and national negotiations, the mediation procedures, the studies, the investigations, the court proceedings, the recurrent crises, and the Government efforts that culminated, at last, in Congressional action. It is enough to mark those stages in the development of the dispute which have direct relevance to the issues before us and to which we will be returning as we consider these issues on the merits. They may be summarized as follows:

1. *The Presidential Railroad Commission.* This Commission, requested and agreed to by both parties, was appointed by the President in November, 1960. It was composed of fifteen members, divided equally between carrier, organization, and public representatives. Directed to inquire into the dispute and report its findings and recommendations, it devoted more than thirteen months of study

to the issues, held extensive hearings, conducted independent studies, made field inspection trips on trains and at railroad installations and, in the light of the information thus gathered, endeavored unsuccessfully to find a basis for a mediated settlement. The report of its public members, issued on February 26, 1962, contained detailed findings on each of the issues and a series of far-reaching recommendations for the modification or review of many work rules, including those relating to the fireman and crew consist issues, and for a major revision of the railroads' pay structure. The carrier members filed a statement expressing dissatisfaction with the report but nevertheless accepting it. The organization members filed dissenting or separate opinions rejecting most of the recommendations, including those bearing on the fireman and crew consist issues.

There followed a series of unsuccessful negotiations pursuant to the Railway Labor Act, announcement by the carriers of their intention to put work rule changes into effect, and litigation by the organizations to forestall such action. The litigation ended in March of this year in a Supreme Court decision that the parties

> " . . . having exhausted all of the statutory procedures, are relegated to self-help in adjusting this dispute, subject only to the invocation of the provisions . . . for the creation of an Emergency Board."[2]

2. *Emergency Board No. 154.* This Board, composed of three public members, was established by the President on April 3, 1963, following an announcement by the carriers of their intention to put their proposed rules changes into effect and notice from the organizations that such action would result in an immediate strike. Though it had access to the records of the Presidential Railroad Commission,

[2] Brotherhood of Locomotive Engineers v. Baltimore and Ohio Railroad, 327 U.S. 284 (1963).

it did not attempt to redo that Commission's work. Rather the Emergency Board devoted its efforts almost entirely to the mediation of the dispute, seeking, as it said, "constructive solutions rather than the mere restatement of the previously fixed positions of the parties," and exploring "paths which may develop into avenues of settlement." It issued its report on May 13, 1963, recommending with regard to each issue a series of guidelines and procedures which might serve as a framework for further collective bargaining. Both as to the fireman issue and the crew consist issue, the recommended procedures included arbitration as a means of settling unresolved issues. The carriers offered to accept the recommendations. The organizations declined either to accept or reject the report, but stated that it could be "a useful tool in the search for a fair and suitable settlement."

3. *Negotiation and Mediation—May through July, 1963.* Following the report of Emergency Board No. 154, there was a period first of direct negotiation between the parties and then of intensive mediation by the Secretary and Assistant Secretary of Labor joined by the Chairman and Members of the National Mediation Board, the thirty-day statutory status-quo period being extended, at the President's request, to July 10, to permit these mediation efforts to proceed. We will later refer to certain of the proposals, memoranda, and written or oral statements which the parties issued during this period. At this point only three things need be noted. (A) *The Secretary of Labor's proposals of July 5 for the disposition of the fireman and crew consist issues, by accepting the principles of the report of Emergency Board No. 154 and arbitrating specific rules.* These proposals were accepted by the carriers but rejected by the organizations on the ground that they involved arbitration. (B) *The President's proposal of July 9 that all issues be submitted by agreement to Associate Justice of the Supreme Court Arthur J.*

Goldberg for final determination. The carriers accepted this proposal. The organizations rejected it. (C) *The Investigation and Report of a Subcommittee of the President's Advisory Committee on Labor-Management Policy.* This Subcommittee, which the President appointed on July 10, after the parties had agreed to a further extension of the status quo to July 29, made no recommendations but reported to the President as to the nature of the issues and the positions of the parties.

4. *Referral to Congress.* The President, on July 22, sent a special message to Congress, transmitting the report of the Subcommittee of the President's Advisory Committee on Labor-Management Policy, and recommending, in substance, that for a two-year period and pending agreement on the disputed issues, the Interstate Commerce Commission should have authority to rule on proposals for interim changes in work rules. Lengthy hearings on this proposed legislation were held both by the Senate Committee on Commerce and the House Committee on Interstate and Foreign Commerce. Before both bodies, representatives of the parties appeared and stated their positions on the issues in dispute. At the urgent request of members of the House and Senate Committees, the parties once more agreed to an extension of the status quo—this time to August 29, 1963—and the Secretary of Labor undertook further efforts to mediate the dispute.

5. *The August 2 Documents of the Secretary of Labor.* On August 2, the Secretary of Labor submitted documents to the parties regarding the fireman and crew consist issues. In an accompanying memorandum, he stated that the documents were intended to identify, with respect to each issue, those areas in which, in his judgment, there was the largest possibility of agreement. The papers were based either on previous recommendations, or on the public, or exchanged, statements of the parties, with some modifications made by the Secretary himself. He urged

that negotiations proceed promptly on the basis of the documents and undertook to continue mediation sessions "until agreement is reached or until it is clear that agreement cannot be reached—and why it cannot be reached."

There followed a series of meetings and discussions designed to clarify the meaning of the August 2 documents and to develop the positions of the parties with respect to those documents. On August 12, however, it became clear that the parties were deadlocked and could not reach final agreement on the merits of either issue.

6. *The August 15 Proposal for Voluntary Arbitration.* After the final breakdown of negotiations, the Secretary of Labor proposed that the parties submit the two key issues—fireman and crew consist—to final and binding arbitration by a six-man board, two members to be appointed by the carriers, two by the organizations, and two by the President. The Board was to make its award within ninety days and was itself to decide the period for which the award would be controlling. The remaining issues were to be taken up by the parties after their receipt of the award.

The carriers accepted this proposal. The organizations indicated their acceptance in principle but rejected certain of the procedural provisions. Efforts to bring the parties to agreement on the terms and procedures of an arbitration agreement were unavailing.

Thus, by August 28, after four years of collective bargaining, exhaustion of the mediation procedures of the Railway Labor Act, investigation and recommendations by two Presidential Commissions, and intensive mediation by the Secretary and Assistant Secretary of Labor and the National Mediation Board, there was still no settlement and the country was faced again—as it had been repeatedly during the course of the dispute—with a nationwide railroad strike. As the President had stated in his message to

Congress, such a strike would force the almost immediate shutdown of all the industrial establishments which depend primarily on rail shipments; would jeopardize the fruit and vegetable and grain crops; would disrupt mail service and commuter traffic and—if it lasted even thirty days—would result in the layoff of some 6,000,000 non-railroad workers in addition to the 700,000 idled railroad employees, a rise in unemployment to fifteen per cent, and a drastic decline in production and in our competitive position in foreign and domestic markets. Faced with this prospect, despite this country's traditional opposition to arbitration compelled by law Congress adopted the Joint Resolution, Public Law 88-108, which created this Board and initiated the present proceeding.

The Joint Resolution established this Board as a seven-man, tripartite arbitration board, similar in status to those functioning under the Railway Labor Act and subject, insofar as is consistent with the Joint Resolution, to the procedural requirements of Sections 7, 8, and 9 of that Act. It submitted the fireman and crew consist issues to the Board for final and binding determination. It directed the Board to begin its hearings within thirty days and to make and file its award in the United States District Court for the District of Columbia within ninety days after the Joint Resolution's enactment. The award is to become effective sixty days after filing and is to continue in force for a maximum of two years, unless the parties agree otherwise.

The Board has today completed the task which Congress set it. After holding twenty-nine days of hearings, receiving the testimony of more than forty witnesses recorded in almost 5,000 pages of transcript, examining more than 200 documentary exhibits, together with a number of motion pictures, photographs, and charts, making inspection trips to four railroad yards in the Chicago area and discussing the issues at length in

executive session, the Board has executed and filed its award on the fireman and crew consist issues.

The Joint Resolution and the Board's Approach

The outer limits of our jurisdiction are set by the notices of proposed changes in the rules and agreements with which the parties initiated this dispute. In Section 3 of the Joint Resolution, Congress provided that the Board

> ". . . shall make a decision . . . as to what disposition shall be made of those portions of the carriers' notices of November 2, 1959, identified as 'Use of Firemen (Helpers) on other than Steam Power' and 'Consist of Road and Yard Crews' and that portion of the organizations' notices of September 7, 1960, identified as 'Minimum Safe Crew Consist' and implementing proposals pertaining thereto. . . ."

Congress did not, however, leave the matter there. Asserting in the preamble to the Joint Resolution the desirability that the dispute be settled "in a manner which preserves and prefers solutions reached through collective bargaining," it directed the Board's attention to the suggestions for the settlement of the fireman and crew consist issues which the Secretary of Labor had made to the parties on August 2, 1963, during the final stages of his mediation efforts. It asked the Secretary to furnish these suggestions to the Board and to inform the Board as to

> ". . . the matters with respect to which the parties were in tentative agreement and the extent of disagreement with respect to matters on which the parties were not in tentative agreement."

It then directed that the Board

> "shall incorporate in such decision any matters on which it finds the parties were in agreement, shall resolve the matters on which the parties were not in agreement, and shall, in making its award, give due consideration to those matters on which the parties were in tentative agreement."

Furthermore, in laying down standards for our guidance, Congress directed that we consider not only the effect of our award upon adequate and safe transportation service to the public and upon the interests of the affected carriers and employees, but also to

> "... the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation."

In accordance with these instructions, the Board's endeavor has been to deal with these issues within the context of the parties' own bargaining, searching for areas of agreement or tentative agreement or, lacking these, of common emphasis and approach. It has not been an easy task. Though the parties largely agree as to the objective circumstances and sequence of their various meetings and the substance and subject matter of their discussions, they are in sharp disagreement whether any of the positions taken represent commitments which should properly be continued and built on by this Board. The problem has been complicated, further, by the fact that the parties often met, not with each other, but with the Secretary of Labor or his assistants and thus had only second-hand knowledge of each other's positions.

In spite of these difficulties, however, no single aspect of this case has received more of our attention than our obligation, under the Joint Resolution, to give due consideration to whatever agreements or tentative agreements the parties reached in their bargaining. Our conclusions are as follows.

As to the fireman issue, though we have found no binding commitments, we have found a large area of at least tentative agreement regarding the benefits and protections that might appropriately be provided to displaced firemen. On the question of the relative equities of firemen of different lengths of service and different degrees of

attachment to the industry, moreover, the parties substantially agreed as to general principles, though disagreeing as to the manner in which those principles should be implemented. And even in those areas where disagreement was sharpest—the cluster of issues touching on the proposed elimination of firemen's jobs—we have found a common recognition that, where a job has been determined to be unnecessary, the equities of the fireman working on that job may nevertheless properly affect the method and timing of its elimination.

All of these questions, however, have to do primarily with the treatment of *individual* firemen. With regard to the treatment of firemen's *jobs* we have found next to nothing in the way of agreement that could serve as a meaningful foundation for our award.

It is true, as the Secretary of Labor says in his memorandum to the Board, that

> "The principle of blanking a fireman (helper) job if, but only if, there is no fireman (helper) on the fireman (helper) seniority list available to fill a vacancy which develops, if filling the vacancy would require a new hire and if blanking the job will not unduly endanger safety or unduly burden other employees was accepted by both parties."

The first portion of this agreement on principle, however, has to do less with *jobs* than with *individuals*; it is an expression of the attrition principle that the "blanking" of a job should be dependent upon the prior exhaustion of individual seniority rights. As to a practical method of determining whether "blanking a job will . . . unduly endanger safety or unduly burden other employees," we found basic disagreement. Both parties recognized that to proceed on a job-by-job basis would result, to use the language of Emergency Board No. 154, in a "hailstorm of grievances" and, in all probability, an equal "hailstorm" of requests for arbitration by a special board.

There was long and detailed discussion, during the summer months, of the principle that certain categories of jobs could be agreed to in advance as not requiring case-by-case review to determine safety and undue burden and that jobs in other categories could be made "blankable" only by agreement or after review by a special board of adjustment. But as to what classes of jobs should be assigned to what categories, as to whether or not there should be a completely non-blankable category, and as to the category sequence which should be followed in blanking jobs, we found stubborn disagreement. Organization proposals on these questions, though repeatedly discussed, amended, and refined, were never accepted by the carriers. Finally, and most important, there was absolutely no agreement by the carriers to the organizations' proposal that there should be an overall limitation on the number of firemen's jobs that might for any reason, be eliminated. Though the organizations repeatedly claimed that their proposed system of job categories, category sequences, attrition arrangements, and blanking procedures would result in the elimination of some 5,500 jobs, and eventually offered to guarantee that figure, the carriers never agreed to any maximum figure whatsoever.

With regard to the fireman issue, then, though we have been able to develop and complete the parties' tentative agreements concerning the treatment of individual firemen, we have found no substantial structure of agreement on which we could base our award concerning the proposed elimination of firemen's jobs. We have had only the suggestion that if the "hailstorm" of disputes could be reduced by a system of categories, review of questions of safety and undue burden by special boards of adjustment would be a manageable and acceptable procedure. In the face of disagreement concerning the category system, this offers little foundation on which to build. In treating the *job* phase of the issue, then, we have had no

alternative but to start from scratch, studying the evidence as to the duties and functions of firemen, drawing our own conclusions as to the general need for firemen on locomotives that do not use steam power, and attempting ourselves to develop a practical system of determining which jobs, if any, may be eliminated.

With regard to the crew consist issue there is far more evidence of agreement and tentative agreement. We have been able to confine ourselves almost entirely, therefore, to the development and refinement of these agreements, the resolution of minor issues, and the cleaning up of details. Both parties seem to have agreed that determinations of proper crew size could best be made locally and that the main problem is one of establishing a satisfactory procedure for the review of such determinations and satisfactory guidelines for the reviewing agency. Both parties seem also to have agreed that the actual process of eliminating jobs found to be unnecessary should be controlled by natural attrition. The principal disagreements concern, on the one hand, the *scope* of the review procedure (i.e., what classes and sizes of crews should be reviewable) and, on the other hand, the *scope* within which attrition should operate (i.e., whether protection should extend only to those actively employed or to furloughed employees as well).

We turn now to a more detailed discussion of the issues.

THE FIREMAN (HELPER) ISSUE

Basis of Findings

In view of the lack of agreement between the parties on the need for firemen in road freight and yard service, we have found it necessary to consider the issue as framed by the initial notices of the parties.

The testimony, exhibits, and arguments submitted to this Board on this issue covered the same areas, though not

always in such exhaustive detail, as those dealt with by the parties' presentations to the Presidential Railroad Commission. Thus, in both proceedings the principal points emphasized were (1) the lookout function in freight and yard service; (2) the mechanical function in freight and yard service; (3) relief of the engineer in both types of service; (4) findings of other tribunals dealing with some aspects of the fireman's role; (5) foreign experience related to the issue; and (6) the essentiality of firemen as a future source of engineers.

We shall not attempt to summarize in this opinion the considerable body of evidence introduced by the parties on these various subjects during the course of the instant case. It would be impossible to do so within manageable limits without paraphrasing or omitting references to many matters which the parties deemed important; such an attempt, as is evident from the organizations' reaction to the report of the Presidential Railroad Commission, would only lead to misunderstanding and resentment. Accordingly, on this point we shall limit ourselves to two observations. First, we believe that to the extent that it has been humanly possible within the limited period of time available, we have reviewed and given due consideration to all evidence and argument submitted to us by the parties on this issue. Second, in our judgment the substance of the parties' presentations to us is essentially the same as that referred to in the Commission's report, and no useful purpose would be served by our covering the same ground again in this opinion. We emphasize, however, that although the Commission's report is part of the official record in this case, and we have given it such persuasive weight as we think it deserves—which is considerable—we have not felt bound by its conclusions, nor does our award necessarily imply agreement with all of them.

Our own independent examination of the record before this Board leads us to the following findings and conclusions:

1. The record contains no evidence to support the charge, frequently and irresponsibly made, that firemen presently employed in road freight and yard service throughout the country are being paid to do nothing and actually perform no useful work.

2. The lookout function presently assigned to the fireman is also performed by the head brakeman in road freight service and by all members of the train crew in yard service. In the great majority of cases the lack of a fireman to perform the related functions of lookout and signal passing will not endanger safety or impair efficiency because these functions can be, as they are now, performed by other crew members.

3. A considerable portion of the mechanical duties now performed by the fireman is not absolutely essential to the safety and efficiency of road freight and yard operations. Those duties which are essential can be performed by the engineer while the locomotive is in service and by shop maintenance personnel at other times. These arrangements would not involve the assignment of fireman's duties to members of other crafts not presently authorized to perform them.

4. Relief of the engineer by the fireman in road freight and yard operations is of critical importance only in the event that the engineer suddenly becomes incapacitated by death or illness. In road freight service the usual presence of the head brakeman in the cab obviates the need for a fireman in such an emergency. In yard service the normal lack of a third man in the cab is offset in part by the reduced speed of the locomotive, and will be offset still further by installing a dead-man control in all yard

engines, which our award requires as a condition precedent to the operation of such locomotives without a fireman.

5. Both the Presidential Railroad Commission and Emergency Board No. 154 have concluded that in most instances firemen are not required in road freight and yard service. In addition, several emergency boards and one arbitration board in this country, although not dealing with precisely the same issue, have ruled adversely on related proposals by the BLF&E and the BLE.

6. Much of the evidence adduced by the carriers on the manning of locomotives on foreign railroads is not readily subject to verification. In any event the many differences in equipment and in operating practices and conditions between American railroads and those of other countries render comparisons in respect to this issue of little or no value.

7. The essentiality of firemen as a future source of engineers was not emphasized in the proceedings before this Board, and there is not much evidence in the record to support any meaningful conclusions. It is apparent, however, that even if the provisions of our award should continue unchanged, firemen on passenger trains will provide a substantial pool of potential engineers for freight as well as passenger service. In the event that a shortage of engineers develops, there should be no serious difficulty in establishing special training and upgrading programs.

In short, although our findings on this issue do not coincide on all points with those of the Presidential Railroad Commission, and although we think it clear that firemen are presently performing useful services, we agree with the Commission "that firemen-helpers are not so essential for the safe and efficient operation of road freight and yard diesels that there should continue to be either a national rule or local rules requiring their assignment on all such diesels." Like the Commission, however, we also

believe that this conclusion should not "preclude the occasional assignment of firemen-helpers on some of the road freight or yard runs which are atypical and which have unusual characteristics." Specifically, we are satisfied that a certain number of such assignments require the continued employment of firemen in order to prevent excessive safety hazards to lives and property, to avoid imposing an undue burden upon the remaining crew members, and to assure adequate and safe transportation service to the public. Of these three considerations, that of safety of railroad employees and equipment seems to us, in the context of this case, to require the most careful attention.

This last observation merits a brief additional comment and explanation. It may be fairly stated that concern with safety has pervaded this entire proceeding. It was apparent in the presentations and arguments by all the organizations and by the carriers, and was further emphasized by the inquiries which members of the Board directed to witnesses and counsel. Safety is, of course, essentially a relative concept; once adequate minimum standards have been achieved, the decision as to how much more safety is required must necessarily be governed by all the accompanying circumstances. Railroading is, unfortunately, a hazardous occupation, and the problem before us cannot be viewed simply in terms of preventing or not preventing accidents. We wish to make it absolutely clear, however, that our judgment on this question has not been affected by considerations of cost or ability to pay.

Reductions in Jobs

One of the most formidable problems confronting this Board and everyone else who has sought a means of resolving the instant dispute is to devise some practicable way to determine the extent and character of the excep-

tional cases in which the employment of firemen in road freight and yard service is necessary or prudent. The Presidential Railroad Commission concluded that the exceptions were so rare that it was neither feasible nor desirable to establish any procedure for identifying them. By making no recommendation on this point, the Commission, in effect, left the assignment of firemen in road freight and yard service to the discretion of management.

Emergency Board No. 154 adopted a different approach. Unlike either the Commission or this Board, it made no findings on the merits of the fireman issue but simply set forth its understanding of the respective positions of the parties, together with suggestions as to how the dispute might be resolved. Thus, it noted that "the brotherhoods do not contend that there are no jobs presently occupied by firemen which cannot be abolished," and that "the carriers, being realists, have suggested that there may be a few freight situations in which the services of a fireman are needed." The Emergency Board proposed a review procedure to determine, in disputed cases, whether the discontinuance of a fireman's job "would unduly endanger safety or unduly burden other employees who would have to take on some of the responsibilities formerly performed by the firemen." It expressed the belief that, properly administered, these principles could be applied so as to prevent both the arbitrary elimination of jobs and abuse through a flood of baseless grievances.

The procedures suggested by the Emergency Board contemplated the assistance of neutrals in establishing "certain categories of jobs or situations the elimination of which by the employer would probably be protested on the basis of safety or undue hardship." They also contemplated the "definitive disposition" by neutrals of unresolved disputes within a fixed period of time, although the way in which this latter suggestion was to be translated into action was not made entirely clear.

In the negotiations which followed the issuance of the Emergency Board's report the parties discussed various ways of accomplishing the review of those situations in which management's decision to eliminate a job would be challenged on grounds of safety hazard or undue burden. The Secretary of Labor's memorandum of August 2, which was based in part on the Emergency Board's report and in part on previous documents and statements of position by the parties, and which served as the principal basis for the ensuing discussions of the issue by the parties with various Government mediators, suggested that road freight and yard jobs be classified into groups of categories. Jobs in the first group would be considered blankable in accordance with a prescribed sequence of categories within that group. Disputes over whether a given job fell within that group, or within one or another of its categories, were to be finally resolved by a special board of adjustment. Jobs in the second group of categories were to be blankable only if the result would not unduly endanger safety or unduly burden other employees. Disputes over these questions were also to be finally resolved by a special board of adjustment. Jobs in the third group of categories were not to be blanked except by agreement of the individual carrier and the organization representing the employees involved.

As previously indicated, the parties differ sharply as to the extent of agreement, if any, they reached on the terms of the August 2 memorandum. Our conclusion is that although the memorandum provided the focal point for their negotiations and in that sense may be said to have brought about a narrowing of the issues, the parties remained in hopeless disagreement on the crucial questions of the numbers and types of jobs on which firemen need no longer be employed, and the sequence and methods of their removal from service.

The Joint Resolution, although providing the means for finally disposing of the principal issues in this long-stand-

ing dispute, also introduced two additional complications. The first is the requirement that the award "shall constitute a complete and final disposition" of the issues submitted to the Board. That statement means, among other things, that the Board cannot delegate to any other body the power finally to determine any of the matters in dispute, except in accordance with relatively restricted and precise standards.

In our opinion sufficient knowledge upon which to base such standards could be obtained only by first-hand observations on the property of each of the carriers involved in this case. In this respect the fireman issue differs markedly from the crew consist issue, as to which the parties themselves developed twenty detailed guidelines for resolving disputes over the manning of train crews. Conversely, on the basis of the record on the fireman issue the Board would be hard put to prescribe standards more definite than those of avoiding safety hazards and the imposition of undue burden on remaining crew members, and insuring adequate and safe public transportation. It is doubtful whether a referral by this Board of cases in which the need for a fireman is disputed to a subsidiary board or boards, with instructions to resolve such disputes on the basis of the general standards just mentioned, would satisfy the statutory command that the Board's own award must constitute a "complete and final disposition" of the issues.

The second complication introduced by the Joint Resolution is the provision that the Board's award shall in no event remain in force for more than two years after its effective date. This means that even if the Board were able to devise legally adequate standards which could be applied by subsidiary bodies to resolve disputes over the necessity for firemen in specific situations, the administrative difficulties involved in making such determinations in sufficient time to yield any significant results would be overwhelming.

The foregoing observation will, perhaps, become more meaningful when one considers the magnitude of the problem confronting the parties. The number of firemen's jobs in road freight and yard service involved in this dispute exceeds 30,000. So deeply are the parties divided on the issue of the need for firemen in road freight and yard service that the predictable attempts by the carriers to eliminate virtually all of these jobs would almost certainly be promptly and vigorously challenged. As the number of such disputes on the various railroads increased, so would the difficulty of obtaining the services of qualified neutrals to resolve them. Considering the probable size of the case load, the likelihood of reducing it significantly in a two-year period would not be very great. Moreover, even the application of uniform standards in all cases would not guarantee consistent results. Finally, the costs to the parties of these numerous proceedings would be very high. In short, we are convinced that the arbitration of disputes over the need for firemen in road freight and yard service on a case-by-case basis on each railroad, even if legally permissible, would simply not be administratively feasible.

It thus becomes necessary to find an appropriate substitute for the arbitration of these types of disputes—the only method of final disposition contemplated by the Emergency Board or seriously considered by the parties during their lengthy negotiations. The procedure we have devised for this purpose involves two steps, for each of which we have specified reasonable time limits. The first step is to be taken by the individual carrier. Within one week from the effective date of the award in this case, it will have the right to establish two lists of crew assignments—one for freight engine crews and one for yard engine crews—then in effect within each fireman seniority district. The crew assignments thus listed may include all of those which, in the judgment of the carrier, based upon considerations of safety, undue work burden on other

crew members, and adequate transportation services to the public, do not require the services of a fireman.

The second step is to be taken by the organization representing the firemen in the given seniority district. After receiving the two lists and discussing them with the carrier, the organization will have the right, based upon considerations of the same criteria of safety, undue burden, and adequate public transportation service, to designate up to ten per cent of the crews on each of the two lists in which a fireman must continue to be employed. The organization's judgment as to which crews must continue to use a fireman will be final and not subject to challenge.

At three-month intervals the two-step process described above will be repeated in each seniority district of every carrier covered by this award. The number of jobs included by the individual carrier in each of the two lists will vary according to the number of diesel locomotives in service at that time, but the proportion of listed crew assignments on which the organization may insist that a fireman be employed will remain a constant ten per cent.

On its face this procedure would seem to permit the individual carriers immediately to stop assigning firemen on ninety per cent of the freight engine crews and yard engine crews which they listed initially. That it will not have such an effect is due to three reasons. First, it will be necessary to provide jobs for firemen whose rights to continued employment are guaranteed by the terms of the award. (This aspect of the problem is discussed in greater detail below.) Second, a number of States, by law or administrative regulation, require the use of firemen in road freight or yard service. Finally, in respect to yard locomotives, the Presidential Railroad Commission recommended that no yard locomotive should be operated without a fireman unless and until it is equipped with a dead-man control in good operating condition, and the carriers have

indicated from the outset their willingness to accept that recommendation.

We do not represent the foregoing procedure to be ideal or foo proof, but we think its virtues of simplicity, certainty, speed, and economy outweigh whatever shortcomings it may have. Both sides have reasonable objections. The carriers point out that the organizations are given absolute authority to decide whether firemen are needed on ten per cent of the crew assignments in road and in yard service. There is no evidence to support the suggestion that the organizations will exercise this power to preserve high-paying jobs rather than to secure the continued assignment of firemen to those crews in which, in their own best judgment, firemen are needed to insure safe and efficient operation. In any event, such ill-advised use of authority would be contrary to the firemen's self-interest. Their concern about safety, in particular, is at least as great as that of anyone else; and we can reasonably assume that those crew assignments on which the organizations elect to protect the fireman's job will for the most part be those which they regard as most hazardous to operate without a fireman.

The organizations, on their part, argue that for reasons of safety and efficiency, firemen are needed on far more than ten per cent of the road and yard engine crews. We do not agree. Admittedly, there is something arbitrary in designating any fixed percentage of engine crew assignments as being so potentially unsafe as to require the services of a fireman. As previously indicated, however, our study of the record has convinced us that the number of road freight and yard assignments in which considerations of safety and efficiency dictate the need for firemen is relatively small. In allowing the firemen's organizations sole discretion to decide that firemen must be used in up to ten per cent of all crew assignments which the carrier has already concluded can be performed safely and efficiently

without firemen, we think we have provided a sufficient margin for error.

Moreover, we wish to emphasize that our conclusions are not based on the assumption that members of any other craft will henceforth perform duties within the exclusive jurisdiction of firemen. Head brakemen will, as in the past, continue to perform, in addition to their other duties, forward lookout functions on the fireman's side of the engine cab. Indeed, in road freight operations there will be, with only infrequent exceptions, a brakeman in the cab with the engineer at all times. In neither road freight nor yard service, however, do we contemplate that brakemen will be asked or expected to perform mechanical repairs and inspections formerly assigned firemen. To the extent that these functions continue, they will be performed in the manner previously described, either by the engineer or by shop maintenance employees.

Although the award issued by the Board in this case disposes of the issues referred to it by Congress, it cannot prevent similar issues from arising in the future. It is safe to say that no carrier or organization presently involved in these proceedings would welcome a recurrence of this dispute. We have already expressed our sincere hope that the parties will not again forfeit their right to deal privately with their own problems through the procedures of collective bargaining. Expressions of hope, however, are not enough; accordingly, we have included in the award a procedure for the continuing study of the need for firemen in road freight and yard service.

The device we have established for this purpose is a four-man National Joint Board. Two of the members of this Board will be chosen by the carriers, and one each by the BLF&E and the BLE. The selection of representatives is, of course, solely within the discretion of the participating parties. We urge them, nevertheless, seriously to consider appointment to the Board of men with current

and intimate knowledge of and responsibility for the operating problems involved. The functions of the National Joint Board would be reduced to a meaningless charade if its members engaged in adversary debates instead of carefully studying at first hand and discussing the effects which our award has on road freight and yard service conducted without firemen. We would anticipate that the National Joint Board would pay particular attention to the general question whether the award has preserved either too few or too many crew assignments requiring firemen. More specifically, we would expect the Board to study the impact of the award on the safety and efficiency of road freight and yard operations, including the incidence and causes of accidents, delays in service, effects on the public transportation system, and tendencies, if any, to assign duties exclusively within the firemen's jurisdiction to members of other crafts, contrary to the intent of our award.

The carriers' representatives on the Board have urged that the parties not be ordered to establish a National Joint Board, although they have expressed a willingness carefully to consider a recommendation to that effect. They argue that the success of the contemplated study depends upon the willing participation and cooperation of the parties involved and, inferentially, that the enterprise is less likely to succeed if it is established under compulsion. Our appraisal of the present situation convinces us, however, that without the impetus provided by the provision in our award establishing a National Joint Board the parties may experience considerable difficulty in reaching agreement on the simple mechanical details of setting it up. We do not feel justified in taking that chance. All members of this Arbitration Board agree that once the National Joint Board is established, it will succeed to an extent directly proportional to the bona fide efforts of all the participating parties to make it work.

The proposed study to be undertaken by the National Joint Board relates only to the fireman issue and is not intended to encompass any of the problems relating to the consist of train crews. The same types of questions to be studied by the National Joint Board in respect to the employment of firemen in road freight and yard service will, under the terms of our award relating to the consist of train crews, be handled by negotiation and arbitration on the properties of the individual carriers.

Reductions In Employment

Thus far we have discussed in detail only the extent to which firemen's jobs in road freight and yard service are to be eliminated and the manner in which that result is to be accomplished. We turn now to a review of the provisions in our award directly relating to the affected employees.

In dealing with the rights of individual firemen we have, as previously noted, found a general accommodation between the parties in respect to guiding principles, although they have remained in disagreement over details. Thus, there has been agreement that, for purposes of determining individual rights, firemen should be classified in the following categories: (1) those recently hired; (2) those "irregulars" whose employment in the railroad industry has been so sporadic that their average monthly earnings from such employment over a given period have not exceeded a specified dollar amount; (3) those who have been on furlough throughout a given period; (4) those with less than ten years' seniority; and (5) those with ten or more years' seniority. Those portions of our award dealing with provisions for each of these categories of employees are explained in general terms below.

1. *New entrants.* In respect to this category of employees the award provides that firemen hired on or after a date two years prior to the effective date of the award

may be terminated; but in that event such employees will receive a lump sum separation allowance. Employees in this category with two full years of service on the date this award becomes effective will, if terminated, receive a separation allowance of six months' pay; those whose length of service is one year or more but less than two years will receive three months' pay; and employees with less than one year's service will receive a lump sum computed on the basis of five days' pay, at the rate of the position last occupied, for each month in which they performed service.

These relatively liberal provisions are based on a different approach than the one implicit in the recommendations of Emergency Board No. 154. It proposed that "those firemen who obtained employment after some reasonable date when it may be presumed that they were on notice that their jobs might not be permanent may have their employment terminated" without compensation of any kind. Although the concept that employees who accept employment with knowledge that it may be terminated in the near future are entitled to no special consideration when that contingency occurs has the support of logic and legal precedent, we think it has less merit than the principle that the relative equities of dismissed employees should be based primarily on length of service and the degree of attachment to the industry. Job-seekers are not always in a position to make objective judgments about accepting or rejecting job opportunities on the basis of future prospects. Finally, unlike the Presidential Railroad Commission, which recommended that the carriers be permitted to terminate recent entrants under twenty-five years of age six months after the effective date of the proposed national agreement, we have disregarded age as a factor in any of the protective provisions of our award. In our view the relative number of years of satisfactory service in an industry, regardless of age, is a more valid basis for

determining appropriate compensation when the employee is involuntarily terminated.

2. "*Irregulars.*" No proposal for special treatment of this category of employees was included in the Commission's recommendations; the idea was first advanced by the Emergency Board, which made the following recommendation:

> "Those who have been employed in recent times as firemen but on an irregular basis, and who consequently have not been able to rely upon the carriers as their primary source of livelihood, may have their rights terminated with a severance allowance equal to some percentage of their recent earnings as a fireman or they may choose to remain on a seniority list with preferential hiring rights for such jobs as may become available and for which they are qualified."

This recommendation was adopted in principle by the parties in their subsequent negotiations and is reflected in the Secretary of Labor's memorandum of August 2. No agreement was reached, however, on several details, the most important of which were the minimum period of employment necessary to qualify for a severance allowance and the number of months to be used as the basis for computing the severance allowance for those employees who do qualify. Our award in this respect applies to firemen hired more than two years before the date the award takes effect whose average monthly earnings in railroad service have not exceeded $200 during the twenty-four full calendar months preceding the effective date of the award. Those "irregulars" who qualify may elect either to terminate with a severance allowance equal to 100 per cent of their earnings during the preceding twenty-four months, or to remain on the seniority lists with rights to such available work on non-blankable jobs as they are qualified to perform.

3. *Furloughed employees.* The Commission did not make a special recommendation for this category of employees, and the Emergency Board recommended that "firemen who have not been employed in recent times" be terminated with no severance allowance. In their subsequent negotiations the parties accepted this principle, on the theory that employees in this category have relatively little attachment to the industry. The award provides that all firemen who were hired more than two years before the effective date of the award and who have not performed service as an engineer or fireman since that date shall be included in this category.

4. *Firemen with less than ten years' seniority.* In respect to employees in this category not otherwise covered by the terms of this award, the Commission recommended that, except for existing rights and obligations to protect vacancies in passenger service and for promotion to engineer, they be made subject to termination, with appropriate allowances, one year following the effective date of the proposed national agreement. The Emergency Board's recommendations for employees in this category were considerably more liberal, and these provided the framework for subsequent negotiations between the parties.

Our award in this respect simply reflects the substantial area of agreement between the parties. In essence it provides that an employee in this category shall retain his right to fireman's employment unless and until offered a comparable job for which he is, or can become, qualified. The offer of another job carries with it certain guarantees, including relocation expenses, continuation of applicable fringe benefits, and guaranteed annual earnings for a maximum of five years.

5. There has never been any dispute in these proceedings over the status of firemen with ten or more years of seniority. Our award reflects the agreement between the parties that all firemen in that category who are not "ir-

regulars" or on furlough shall retain all existing employment rights, except as modified by the provisions of the award relating to reduction of jobs, and that, in any event, they shall not be terminated except for cause or by natural attrition.

Crew Consist Issue

It has been explained earlier in this opinion that the size of road and yard crews in other engine service has never been the subject of a national rule in the railroad industry. The consist of these crews, involving primarily helpers and road brakemen, has been determined generally by local rules, practices, state full crew laws or regulations issued by State Public Utility Commissions. Only a relatively few carriers are unrestricted in determining the size of crews, and it is doubtful if even they have complete freedom to change crew size as they wish. It is clear from the evidence before us that the myriad of local arrangements has led to numerous inconsistencies in the manning of crews. It is equally clear that some of the existing rules, originating as they did more than a half-century ago, are anachronistic and do not reflect the present state of railroad technology and operating conditions.

We find from the testimony and evidence that some overmanning exists in road-and-yard crews as a result of schedule rules and local agreements. Though the evidence as to undermanning is less persuasive, we must also acknowledge this possibility on some assignments. One of the difficulties confronting this Board is the same that confronted the Presidential Railroad Commission. It is the inability to determine from the evidence the extent to which overmanning or undermanning exists. The carriers submitted to our Board, as they did to the Commission, an estimate that approximately 19,000 employees were unneeded in all classes of service. However, a more recent survey (November 1, 1963) made by the carriers at our request indi-

cated an estimated total of substantially less than 19,000. The only conclusions we may derive from available data are that judgments vary considerably among operating people concerning the adequacy of crew size and that the problem of overmanning, to the extent it exists, varies greatly from carrier to carrier. The organizations submitted no concrete evidence of undermanning.

It is apparent to us that the consist of crews necessary to assure safety and to prevent undue workloads must be determined primarily by local conditions. A national prescription of crew size would be wholly unrealistic. Some yard service crews, for example, now consist of one foreman and one brakeman, while others consist of one foreman and as many as ten brakemen. The variation depends on a great complex of factors, reflected by the guidelines mentioned below. Though the range is less pronounced in road service, it also makes unfeasible a definitive national rule.

In their argument the carriers point out that "operating conditions, operating methods and service requirements vary greatly from railroad to railroad, from division to division and from yard to yard on the same railroad, and, over significant periods of time, on the same division and in the same yard." It is not possible, they say, "to write a rule or rules that would accommodate the consist of crews to such variation in conditions." For this reason, they urge the elimination of all agreements, rules, regulations, and practices requiring the employment of a stipulated number of trainmen and propose, further, that management should be given the unrestricted right under any and all circumstances to determine the size of crew consist.

The disarming simplicity and the incisiveness of the carriers' approach cannot obscure the basic flaw in the premise upon which it is founded. Simply stated, that premise is that management shall have the absolute right to determine the consist of crews. If adopted, the carriers'

notice of November 2, 1959, would certainly permit local determination and consideration of the many factors affecting adequacy of crew size. But we are not prepared in this situation to award the carriers such a degree of authority. It may well be, as the carriers argue, that a rule giving management the absolute discretion to determine the consist of crews would be self-policing, and that the maintenance of safe and fast service, essential to economic survival, would be a safeguard against abuse of its discretionary powers. The employees involved, however, are entitled to more protection than is afforded by these assurances of good-faith. They have a legitimate interest in workload and in safety, and this interest must be given due consideration under the Joint Resolution. For this reason alone it is doubtful if a ruling favoring the carriers would constitute adequate compliance with the statute creating this Board. Under the carrier proposal the employees would be deprived of an opportunity to express effectively their views on a matter of great concern to them; they would lack an avenue for redress if a carrier operating official abused his discretion or erred greatly in his judgment of the safety hazards and workload involved. In this industry, as the Presidential Railroad Commission stated, there has been a traditional "collective bargaining interest in the matter of crew consist." We agree with the Commission's view that the "collective bargaining process should remain the basic method for resolving disputes concerning this matter."

The organizations' proposal is unsatisfactory for several reasons. First, by prescribing minimum crews for all classes of service, the organizations' notice of September 7, 1960, fails to give consideration to local conditions except for those requiring crews in excess of the minimum. Second, it provides no method for correction of overmanning that may now exist because of schedule rules. Third, it makes no provision for the resolution of unresolved disputes. Finally, although the most prevalent

crew consist, in other than passenger service, is a conductor (foreman) and two brakemen (helpers), this fact provides the basis for only the most tentative generalizations. It does not justify a national rule establishing this as the minimum consist ratio. Some assignments were cited in the record before us in which the present consist is one conductor and one brakeman. The organizations offered no testimony or evidence to show that these situations were undermanned; yet the effect of their proposal would be arbitrarily to increase these consists by one man.

The mandate of Congress in the Joint Resolution that this Board shall give due consideration "to those matters on which the parties were in tentative agreement" and "to the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation" plays a significant part in the final award on this issue. As we have previously noted, negotiations during the summer of 1963 on the crew consist issue, unlike those on the fireman issue, resulted in tentative agreements and a clear narrowing of the areas of disagreement. This conclusion is supported by the testimony of carrier and organization witnesses and by the documents received from the Secretary of Labor.

The approach taken in the 1963 negotiations followed the recommendations of Emergency Board No. 154. That Board defined the real issue as the "choice of the most appropriate mechanism for adjusting any undermanning or overmanning of individual crews which may exist." It concluded, as we have from the evidence before us, that crew consist was essentially a local problem, best handled by local negotiations. Emergency Board No. 154 then made these provocative suggestions:

> "It should be possible for the parties in direct bargaining to establish guidelines nationally to provide overall direction for these local negotiations. These guidelines ought to be based on considerations of safety and

efficiency and of undue burden on other members of the crew. Alleged violation of these guidelines would then be discussed locally."

It suggested further that if negotiations failed to resolve the matter, submission to a special referee procedure should be provided.

It is unnecessary to describe in detail the changes in positions of the respective parties as bargaining continued during the summer months. During the summer months both parties had accepted the general approaches recommended by the Emergency Board, and, by August 2, 1963, were bargaining within the following framework of an agreement: (1) the remanding of the crew consist issue to the local properties for negotiations; (2) the adoption of a provisional rule pending agreement at the local level; (3) acceptance of the principle that the rule would provide an opportunity for review of, and possible changes in, the consist of crews in some classes of service, and would foreclose review and change in other classes of service; (4) the development of national guidelines, some of a general nature and some applicable to specific types of service; (5) acceptance of the principle that the merits of any proposed changes in crew consist were to be determined by reference to these guidelines; (6) the referral to a special board of adjustment for final decision of any disputes arising over the application of the guidelines; and (7) provision for employee protection by application of an attrition principle.

It is not suggested that the parties were irrevocably committed to these basic approaches. We recognize, of course, that their acceptance was conditional upon successful resolution of other substantive matters. Nevertheless, bargaining within this framework represented in itself a substantial narrowing of the areas of disagreement. It was impressive indication of the parties' willingness, in

the interest of reaching agreement, to depart from their extreme positions, as expressed in the original notices.

Tentative agreement was reached on substantive matters to be included in a final settlement. It was agreed that all situation other than those involving a crew consist of one conductor (foreman) and two brakeman (helpess) would be reviewable. So-called "one-and-two" situations would remain unchanged. Thus, the organization could seek changes on the basis of alleged undermanning if the present rule or practice called for only one brakeman or helper. The carrier, for example, could seek change on the basis of alleged overmanning if the present rule or practice called for three or more brakemen or helpers. In either case, the guidelines were to govern in deciding the merits of the change sought. Most of the details of the review procedure, other than time limitations for observance of the procedural steps, were worked out successfully. Perhaps of paramount importance was the tentative agreement reached on approximately twenty guidelines, as to which the parties differed only on minor matters of substance or language.

Except for minor modifications, our award reflects each one of these tentative agreements, both in matters of approach and in matters of substance. The progress made by the parties through their own efforts and with the assistance of the Secretary of Labor, the Assistant Secretary of Labor, and the Chairman of the National Mediation Board constituted a long stride toward settlement. We have given due consideration to these tentative agreements in compliance with the statute. We have adopted them in our award because they are consistent with our understanding of the merits of the issue on the basis of the record before us. To the guidelines tentatively agreed upon by the parties, we have added one, necessitated by the terms of our award on the fireman issue. It requires that the parties and the system boards of adjustment take into account the presence or absence of a fireman as it may effect the adequacy of crew size.

Our principal task has been the resolution of those matters of substance about which there was disagreement. There were two such matters. The first, and more important, concerned which crews would be subject to review and possible change where the present stipulated composition was one conductor (foreman) and two brakemen (helpers). The second concerned the exact nature of the attrition principle to be followed.

With respect to the first area of disagreement, the carriers maintained consistently during the 1963 summer negotiations that all yard crew consists should be reviewable, regardless of the present size of the consist; they also insisted that, in road service, review and change of "one-and-two" situations should be permitted on branch lines, secondary main lines, and main lines on which centralized traffic control (CTC) and similar electronic equipment had been installed. In the meetings in late July and thereafter the discussion centered mostly on the inclusion of "secondary main lines," certainly not a term of art recognized in the industry. The organizations sought a definition of what would be involved in secondary main lines. On the basis of the definition given by the carriers, an organization witness concluded that this "would mean an attack on all road crews on what would be about 90 per cent of all tracks outside of yards in this country." The carriers did not challenge this estimate.

The organizations finally expressed a willingness to accept, review and change of "one-and-two" situations on branch lines. They were willing to negotiate the question of secondary main lines, but only when a meaningful or reliable definition of the term was given by the carriers. In addition, they remained firm in their position that only a crew consist of other than "one-and-two" should be reviewable in yard service assignments.

It is evident that this area of disagreement was, as of August 2, 1963, and at the time of our hearings, the prin-

cipal obstacle to the successful resolution of the crew consist issue. That the companion fireman issue remained unsettled was an additional obstacle.

It is our belief that review and possible change in the size of yard service crews should be permitted even in the "one-and-two" situations. Variability of yard assignments and environmental factors is so great that it would be quite feasible for some assignments to be handled by a conductor and one helper without any impairment of safety and without imposition of undue burden on the remaining crew members. In the case of branch line road service crews, we are similarly convinced that review should be allowed, regardless of existing rules as to crew consist. On some branch lines only one train of a few cars operates each day. The carriers made a persuasive showing that under these circumstances it may be adequate to have one brakeman stationed in the locomotive and have the conductor in the caboose. Furthermore, the organizations' offer to permit a broad review of branch line assignments cannot be ignored.

Whether the vaguely-defined "secondary main lines" and main line road service protected by automatic block signals, CTC, or other automatic control equipment, should be treated similarly is a more difficult problem. We have concluded that review and change on these assignments should be limited to consist of crews that involve more or less than two trainmen, and that rules or practices requiring two trainmen should remain unchanged for the duration of the Board's award.

There are several reasons for this conclusion. The first is the practical consideration of controlling the number of potential cases to be heard by the special boards of adjustment during the life of this award. Although the number of jobs subject to review is likely to be a relatively small percentage of the total train service jobs, and although it is expected that the guidelines will yield a sub-

stantial number of negotiated settlements, nevertheless the arbitration burden could be considerable. As a result of the evidence submitted, we are also of the opinion that the justification for downward deviation from the "one-and-two" consist in over-the-road operations was less convincing. Finally, with respect to the category of secondary main lines, at no time did that classification become meaningful to us. The definition submitted by the carriers was ambiguous, and there was no testimony or evidence to show that secondary main lines, as such, involved a serious overmanning problem. In denying the review of present one-and-two situations in these categories of road service, we are not saying that no overmanning or undermanning exists. We are saying only that, for the reasons indicated, it would be wiser to maintain the status quo during the effective period of this award.

The second area of disagreement concerns the application of the attrition principle. Both parties agreed that the actual elimination of jobs found to be unnecessary should be governed by the processes of "natural attrition". The carriers, however, considered this to mean that no employee on the active payroll should lose his employment by reason of job elimination, but when such an employee retired or left his employment for other reasons, he would not have to be replaced if there was a job in the seniority district marked for elimination. The organizations wanted not only present employees to be protected, but also any employees who maintained a seniority relationship in the industry. Thus, those employees on furlough, some of whom might have been on furlough status for a long time, would have to be offered jobs vacated by retirements, deaths, or terminations before any of the unnecessary jobs could be eliminated.

The August 2 document provided that an "employee employed or having an employee relation with the carrier on the date of this agreement" was to be a "protected"

employee, and that no job could be eliminated when to do so would result in a "protected" employee being deprived of employment. This language was derived from an organizations' proposal submitted on July 2, 1963. The organizations assert that there was agreement on this approach to attrition, basing their conclusion on statements by carrier spokesmen in negotiations and before Congressional committees that they accepted the principle of full attrition. The carriers deny that there was agreement on the attrition formula as stated in the August 2, 1963, proposal.

The record before us leads to the conclusion that there was never an agreement between the parties on the exact scope of the attrition principle. Unfortunately, there was little discussion of the matter in the negotiations; the parties were preoccupied more with the scope of the review procedure and the development of guidelines. However, an organization witness testified under direct examination that on June 18 the principal negotiator for the carriers said he "would not be opposed to protect the present regular workforce, but he would be opposed to protection of extra men or employees furloughed." This statement was repeated in a meeting on July 1. This same organization witness, in response to a question by a Board member, said it was correct to say there was "a firm agreement on attrition, provided extra men and furloughed men would not be considered."

In our handling of this issue, as well as the fireman issue, we have adopted the view that the effect of our award should not result in serious hardship to those men who have been attached to the industry for any considerable length of time. Because the number of brakemen and helpers jobs that are likely to be eliminated is such a small percentage of total employment in these crafts, the attrition principle is the fairest method of controlling job elimination.

Our award provides that all employees, other than those on furlough on the date the award becomes effective, are to be regarded as "protected employees." A "protected" employee is to continue as an active employee until he quits, retires, dies, or is discharged for cause. In no way will his employment rights be affected adversely by the award. However, we do not believe that the elimination of a job through natural attrition should be delayed by extending "protected" status to those men who are on furlough as of the effective date of the award. These men will not, as of that date, have a job. In effect, their position is unchanged. They remain on the seniority list and retain any recall rights they now possess. They are affected only if, and to the extent, that the number of jobs to which they might have been recalled will be reduced as a result of this award. The selection of the effective date of the award as the time for determining which employees are to be given protected status seems to us to be reasonable. The determination should be made before the review procedure is implemented, and there is little purpose in making the determination prior to the date provided.

Washington, D. C.
November 26, 1963

APPENDIX II

BEFORE THE
ARBITRATION BOARD

Established by Joint Resolution of Congress
Approved August 28, 1963

Public Law 88-108

National Mediation Board

Arbitration Board No. 282

CERTAIN CARRIERS REPRESENTED BY THE EASTERN, WESTERN, AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES

and

CERTAIN OF THEIR EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, BROTHERHOOD OF RAILROAD TRAINMEN, AND THE SWITCHMEN'S UNION OF NORTH AMERICA

Washington, D. C.
November 26, 1963

Award

This Award is made pursuant to Public Law 88-108, 88th Congress, S.J. Res. 102, enacted August 28, 1963.

The organization parties to the dispute named H. E. Gilbert and R. H. McDonald as organization members of this Arbitration Board. The carrier parties to the dispute named Guy W. Knight and J. E. Wolfe as carrier members of the Board. Benjamin Aaron, James J. Healy, and Ralph T. Seward were named as neutral members by the President.

On September 11, 1963, the Board met, elected its Chairman and adopted rules of procedure. On September 23, 1963, in accordance with Section 3 of the Joint Resolution,

the Secretary of Labor furnished to the Board and to the parties to the dispute copies of his statement to the parties of August 2, 1963, together with memorandums setting forth his understanding of the matters with respect to which the parties were in tentative agreement and the extent of disagreement with respect to matters on which the parties were not in tentative agreement.

Public hearings were held in Washington, D. C., on twenty-nine days between September 24 and November 2, 1963, at which witnesses were heard, exhibits introduced and arguments made. Rebuttal exhibits and written arguments were received on November 9, 1963.

On November 6 and 7, 1963, the neutral members of the Board, with the agreement of the parties, visited certain railroad yards in the Chicago area. The sole purpose of these visits was to assist the neutral members in understanding the evidence and arguments presented at the formal hearings and nothing said or shown to them during these visits was accepted as evidence.

During the course of the proceedings, questions arose as to whether certain carriers and certain of their employees were or properly should be parties to the dispute and subject to the Board's jurisdiction. The carriers with regard to which such questions arose were the Union Railroad Company, the Florida East Coast Railway Company, and the Elgin, Joliet & Eastern Railway Company. The Board declined to rule on these jurisdictional questions on the grounds that final determination of the Board's jurisdiction over any particular carrier and any particular group of employees could be made only by the courts and that time did not permit the Board to conduct the special proceedings required for such a determination. Nothing in this Award, however, and no action by the Board, including the reception into evidence of Carriers' Exhibit No. 1 or Employees' Rebuttal Exhibit No. 33, listing certain carriers as parties to the proceeding, is intended to

prejudice the position of any carrier or any organization as to these jurisdictional questions.

The Board has incorporated in this Award any matters on which it found the parties were in agreement, has resolved the matters on which the parties were not in agreement, and has given due consideration to those matters on which the parties were in tentative agreement. Further, the Board has given due consideration to the effect of the Award upon adequate and safe transportation service to the public and upon the interests of the carrier and employees affected, giving due consideration to the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation.

After a full consideration of the evidence and arguments and upon the entire record, the Board makes a complete and final disposition of the issues submitted and finds and awards as follows.

I. Disposition of Section 6 Notices

Those portions of the carriers' notices of November 2, 1959, identified as "Use of Firemen (Helpers) on Other Than Steam Power" and "Consist of Road and Yard Crews" and that portion of the organizations' notices of September 7, 1960, identified as "Minimum Safe Crew Consist" and implementing proposals pertaining thereto are denied, except to the extent hereinafter provided.

II. Use of Firemen (Helpers) on Other Than Steam Power

Part A—Saving Clause

N(1). All agreements, rules, regulations, interpretations, and practices, however established, with respect to the employment of firemen (helpers) shall continue undisturbed except as modified by the terms of this Award.

PART B—REDUCTIONS IN JOBS

B(1). Within 7 days following the effective date of this Award, each carrier covered by this Award shall have the right to give to each local chairman of the organization representing firemen (helpers) in each fireman (helper) seniority district a list of pool and regularly assigned freight engine crews (including pool and regularly assigned crews used in mixed, miscellaneous, and unclassified services) and a list of regularly assigned yard engine crews (including regularly assigned crews used in transfer, belt line, and miscellaneous yard services) then employed by the carrier in each such seniority district. The two lists shall include those engine crews which, in the carrier's judgment, based upon considerations of safety, undue work burden, and adequate and safe transportation service to the public, do not require the services of a fireman (helper).

B(2). Each local chairman, within 30 days of receipt of the carrier's lists, shall have the right, based upon considerations of safety, undue work burden, and adequate and safe transportation service to the public, to designate the engine crews in which the carrier shall be required to continue to use firemen (helpers); provided, that such designated crews shall not be more than 10 per cent of the freight engine crews, nor more than 10 per cent of the yard engine crews in any seniority district, as such crews are listed by the carrier. Each local chairman's designation of crews to be operated with firemen (helpers), made as provided herein, shall be final and binding upon the parties in interest and shall not be subject to challenge or review: but prior conference shall be had between the parties in interest with respect to the crews to be so designated by the local chairman. The time and place for the beginning of such conferences shall be agreed upon within 10 days after the receipt of the carrier's lists by the local chairman, and said time shall be within 20 days after the receipt of the said lists.

B(3). At 3-month intervals following the date of the carrier's original lists, the carrier shall give to each local chairman lists of pool and regularly assigned freight engine crews and of regularly assigned yard engine crews which have been established or discontinued in each seniority district during the preceding 3 months and which meet the criteria set forth in paragraph B(1) of this Award; and the number of crews designated by the local chairman in which the carrier shall be required to use firemen (helpers) shall thereafter be adjusted, in the manner provided in paragraph B(2) of this Award; provided that not more than 10 per cent of the pool and regularly assigned freight engine crews nor more than 10 per cent of the regularly assigned yard engine crews, then employed by the carrier in any seniority district and included in either list, shall be designated as crews in which firemen (helpers) must be used.

B(4). Copies of all lists herein required to be furnished by the carrier to the local chairman shall be furnished to the general chairman of the organization involved.

B(5). After the expiration of 37 days following the effective date of this Award, the carrier shall not be required to use firemen (helpers) on other than steam power in any class of freight service (including all mixed, miscellaneous, and unclassified services) or in any class of yard service (including all transfer, belt line, and miscellaneous yard services), other than in crews designated by the local chairman, pursuant to the provisions of paragraphs B(2) and B(3) of this Award, except as may be necessary to provide jobs for firemen (helpers) whose employment rights are retained as provided in Parts C and D of this Award; provided that no yard locomotive shall be operated without a fireman (helper) unless and until it is equipped with a deadman control in good operating condition.

PART C—REDUCTIONS IN EMPLOYMENT

C(1). After the expiration of 37 days following the effective date of this Award, the carrier shall not be required to hire firemen (helpers) on other than steam power in any class of freight service (including all mixed, miscellaneous, and unclassified services) or in any class of yard service (including all transfer, belt line, and miscellaneous yard services) unless or until such new hire is needed to man engine crews designated by a local chairman as provided in paragraphs B(2) and B(3) of this Award; and firemen (helpers) that are unneeded to man such designated crews may be separated from the carrier's payrolls and have all of their seniority and employment rights and relations terminated to the extent permitted in the following paragraphs of Part C of this Award.

C(2). Firemen (helpers) hired on or after a date 2 years prior to the effective date of this Award may be separated from the carrier's payrolls and have all of their employment and seniority rights and relations terminated, and in such case shall be entitled to a lump sum separation allowance in an amount to be determined as provided in Section 9 of the Washington Job Protection Agreement of May 21, 1936.

C(3). Firemen (helpers) hired prior to a date 2 years prior to the effective date of this Award whose average monthly earnings as firemen (helpers), hostler helpers, hostlers, or engineers have not exceeded $200 during the 24 full calendar months preceding the effective date of this Award, may be separated from the carrier's payrolls and have all of their employment and seniority rights and relations terminated with a severance allowance equal to 100 per cent of their earnings during the preceding 24 calendar months; or may elect to remain on the seniority lists of the carrier with rights to such work as they are qualified to perform, and which may be or become available to them, as provided in Part D of this Award.

C(4). Firemen (helpers) hired prior to a date 2 years prior to the effective date of this Award, who have not performed service as an engineer or as a fireman (helper) since that date, may be separated from the carrier's payrolls as firemen (helpers) and have all of their employment and seniority rights and relations as firemen (helpers) terminated with no severance allowance.

C(5). The provisions of paragraphs C(3) and C(4) of this Award shall not apply to officers or employees of the organizations representing firemen or engineers employed by the carrier, or to supervisory or management officials of the carrier, or to employees on appropriate leaves of absence, or to discharged employees whose cases for reinstatement are pending, providing, if not so situated, they could have met the minimum requirements of service or earnings.

C(6). All other firemen (helpers) with less than 10 years' seniority on the effective date of this Award shall retain their rights to and obligations to protect engine service assignments as provided by rules in effect on the day preceding the day this Award becomes effective, except as modified by and subject to the provisions of Part D of this Award, unless and until offered by the carrier another comparable job (such as, but not limited to, engineer, fireman (helper), brakeman, or clerk in the same or another seniority district) for which they are, or can become, qualified. The offer of another job shall carry with it relocation expenses as provided for and under the conditions set forth in Section 10 of the Washington Job Protection Agreement of May 21, 1936, the continuation of accumulated seniority rights toward such purposes as vacation and other applicable fringe benefits, and guaranteed annual earnings, for a period not exceeding 5 years, equal to the total compensation received by each such employee as fireman (helper), hostler helper, hostler, or engineer during the last 12 months in which compensation

was received prior to the date of transfer. Such offers of jobs shall be posted and made available to all qualified firemen (helpers) in order of seniority in the seniority district in which the job offered is located. If, within 7 days after notice is posted, no senior man elects to take such offered job, the most junior man then on the fireman (helper) roster in that seniority district must, within 3 days from receipt of written notice, accept the job or all of his employment and seniority rights and relations shall be terminated and, in that event, he shall be entitled to one-half the severance allowance provided for in paragraph C(3) of this Award. If such junior fireman (helper) shall fail to accept such job and thereby terminates his employment as herein provided, the next most junior fireman (helper) on that same roster must accept the job within 3 days from receipt of written notice or forfeit all of his employment and seniority rights and relations with the allowance provided for above. In each case of refusal to accept such job offer the next most junior fireman (helper) shall be required to accept, as provided for above, or forfeit his employment and seniority rights and relations with, in each case, the allowance provided for above until there are no firemen (helpers) with less than 10 years' seniority remaining on the seniority roster for the seniority district in which the job offer is located. Thereafter, the same procedure as is provided above shall be followed in the fireman (helper) seniority district which has its principal extra list for firemen (helpers) closest to the location of the job offered.

C(7). Firemen (helpers) with 10 or more years of seniority as of the effective date of this Award, who are not separated from the carrier's payrolls under the provisions of paragraphs C(3) or C(4) of this Award, shall retain their rights to and obligations to protect engine service assignments as provided by rules in effect on the day preceding the day this Award becomes effective, except as modified by and subject to the provisions of Part D of

this Award, unless and until retired, discharged for cause, or otherwise removed from the carrier's active working lists of firemen (helpers) by natural attrition.

PART D—RIGHTS TO WORK

D(1). Firemen (helpers) who elect to remain on the seniority lists of the carrier as provided in paragraph C(3) of this Award shall be entitled to exercise their seniority rights as firemen (helpers) to available employment in engine crews used in passenger service and in freight and yard engine crews designated by the local chairmen in their respective seniority districts as provided in paragraphs B(2) and B(3) of this Award, as hostlers or hostler helpers, and as engineers in any class of service for which they are qualified; but, such firemen (helpers) shall have no rights to and shall not claim seniority rights to or employment in any other service.

D(2). Firemen (helpers) who remain on the active working lists of the carrier under the provisions of paragraphs C(6) and C(7) of this Award shall have the right to work their turn as firemen (helpers) to the extent that positions as firemen (helpers) are available in their respective seniority districts on locomotives of the type to which firemen (helpers) were assigned and in a class of service calling for the service of a fireman (helper) prior to the effective date of this Award; provided, that such firemen (helpers) shall have no right to jobs that the carrier may discontinue pursuant to the provisions of this Award if other employment in any class of engine service, for which they are qualified, is available to them in their respective seniority districts. Such firemen (helpers) will have their seniority rights, existing as of the effective date of this Award, for promotion in their turn, preserved.

D(3). Extra lists shall be adjusted and firemen (helpers) shall be furloughed and recalled pursuant to the provisions of rules in effect as of the day before the day this Award becomes effective, as modified by and subject to the pro-

visions of this Award; provided, that the carrier shall not be required to use firemen (helpers) covered by paragraph D(2) of this Award in freight or yard crews, other than in crews designated by the local chairmen pursuant to the provisions of paragraphs B(2) and B(3) if the services of such employees are required on the extra list to fill vacancies in crews or positions where firemen (helpers) must be used, as in passenger service or under the provisions of this Award.

D(4). Firemen (helpers) retained in service under the conditions set forth in Parts C and D of this Award, when assigned to the extra lists for firemen (helpers), shall not be called to fill vacancies in crews in freight and yard service which have not been designated by the local chairmen pursuant to the provisions of paragraphs B(2) and B(3) of this Award if and when their services are required to fill temporary vacancies as locomotive engineers, or temporary vacancies for firemen (helpers) in passenger service, or temporary vacancies for firemen (helpers) in crews designated by the local chairmen as provided in paragraphs B(2) and B(3) of this Award.

PART E—CONTINUING STUDY

E(1). Within 30 days following the effective date of this Award, the parties shall establish a National Joint Board charged with responsibility for making an intensive and continuing study of the experience in road freight and yard service with and without the employment of firemen (helpers) during the period that this Award remains in effect. During the 3-month period before the date this Award is due to expire, the National Joint Board shall prepare and issue to the parties a report based on its study.

E(2). The National Joint Board established in paragraph E(1) shall consist of 4 members, of whom 2 shall be selected by the carriers, and one each by the Brotherhood of Locomotive Firemen and Enginemen, and by the

Brotherhood of Locomotive Engineers. The expenses of the Board shall be borne by the participating parties.

III. Consist of Road and Yard Crews (Other Than Engine Service)

Part A—Basic Provisions

A(1). The issue of crew consist (other than engine service) shall be remanded to the local properties for negotiation. Pending the consummation of local agreements disposing of the issue, the following provisions shall govern the use of trainmen (assistant conductors, ticket collectors, baggagemen, brakemen, and flagmen) employed in all classes of road service, including all miscellaneous and unclassified services, and the use of brakemen or helpers employed in all classes of yard, transfer, and belt line service, including all miscellaneous yard services.

A(2). No change shall be made in the scope or application of rules in effect immediately prior to the effective date of this Award, whether established by agreement, interpretation, or practice, which require a stipulated number of trainmen (assistant conductors, ticket collectors, baggagemen, brakemen, or flagmen) in any class of road service, including all miscellaneous and unclassified services, or which require a stipulated number of brakemen or helpers in any class of yard, transfer, or belt line service, including all miscellaneous yard services, except by agreement, or pursuant to the provisions of this Award.

A(3). Either party in interest shall give written notice of any proposed change in any such stipulated number of trainmen (assistant conductors, ticket collectors, baggagemen, brakemen, or flagmen) used in any class of road service, including all miscellaneous and unclassified services, in the following categories:

(a) branch lines, including the use of main lines where necessary to reach initial or final terminals of the branch line train; and

(b) road service where existing rule, practice, or interpretation now requires the employment of more or less than 2 trainmen;

and of any proposed change in any such stipulated number of brakemen or helpers used in any class of yard, transfer, or belt line service, including all miscellaneous yard service. The parties in interest, as that term is used in this Award, shall include only the carrier and the organization representing the class or craft of employees holding seniority rights to the position or positions proposed to be abolished or created in the seniority district or districts in which such changes are proposed. The time and place for the beginning of conferences between the representatives of the parties in interest with respect to such proposed change or changes shall be agreed upon within 10 days after the receipt of said notice, and said time shall be within 15 days after the receipt of said notice.

PART B—REVIEW PROCEDURES

B(1). If no agreement is reached between the parties as to the application of the guidelines enumerated in Part C of this Award, the dispute limited to the application of such guidelines as related to the issue involved may be referred by either party to a special board of adjustment.

B(2). Such special board of adjustment shall be chosen in the following manner:

(a) Each party in interest shall name one member within 10 days after notice has been given that the dispute will be referred to such special board of adjustment; and the two partisan members so chosen, within 10 days after the date of the selection of the second partisan member, shall name the neutral member, who shall be chairman of the board. If the members chosen by the parties shall fail to name the neutral member of the board within 10 days, the National Mediation Board shall be requested to name such

member within 5 days after the receipt of such request.

(b) If either party fails to name a member of the board within the 10 days provided in paragraph B(2)(a) of this Award, the National Mediation Board shall be requested to name such member in lieu of such party and shall also name the neutral member necessary to constitute a board of 3 members, all within 5 days after the receipt of such request.

B(3). Decisions of the special board of adjustment shall be rendered within 60 days after the appointment of the neutral member. A decision of the majority of the board shall be binding upon both parties. The parties shall assume the costs and expenses of their respective representatives. The costs and expenses of the neutral member and any incidental expenses shall be shared equally by the parties unless different arrangements can be made by mutual agreement.

PART C—GUIDELINES

C(1). The special board of adjustment in making its decisions shall be governed by the following general considerations, and, where applicable, particular considerations, although none of these factors alone shall be controlling of the board's decisions.

C(2). General considerations.

(a) Assurance of adequate safety.

(b) Avoidance of unreasonable burden or workload on members of the crew.

(c) Changes in operating conditions, including density of traffic.

(d) Practices regarding the consist of crews in comparable situations where such practices are not in dispute.

(e) Special conditions which exist on any particular assignment.

(f) Duties required in compliance with the carrier's operating rules and instructions applicable to the crew in question.

(g) Physical characteristics of the line to be traversed and in the areas where switching or industrial work is to be performed (including grade and general climatic conditions).

(h) The number of highway, street, road, railroad, or other crossings or intersections to be protected.

(i) State, county, or municipal regulations applicable with respect to highway, street, road, railroad, or other crossings or intersections.

(j) Availability and use of communication equipment (such as, but not limited to, end-to-end train radio, train to way-side radio, and walkie-talkies).

(k) The presence or absence of a fireman in the engine service crew.

(3). Particular considerations—passenger road service.

(a) The amount of baggage and storage mail to be handled on and off the train at intermediate stations by the train crew.

(b) The number of passenger cars handled in the train and passenger count.

(c) The method of handling passenger transportation (tickets).

(d) The number of passengers boarding and leaving the train at intermediate stations.

(e) Duties required other than the above on any particular assignment.

(4). Particular considerations—freight service, including miscellaneous and unclassified services.

(a) The amount and nature of work to be performed en route.

(b) The length of train in context with the amount and nature of work to be performed en route.

(c) Time limitations applicable to the particular assignment.

C(5). Particular considerations—yard, transfer, and belt line service, including all miscellaneous yard services.

(a) The amount and nature of the work to be performed.

(b) Volume of work considered in context with applicable service time limitations.

PART D—EMPLOYEE PROTECTION

D(1). Road trainmen and yard brakemen or helpers, other than those on furlough on the date that this Award becomes effective, shall be known and designated, for the purposes of this Award, as "protected employees."

D(2). A "protected employee," known and designated as provided in paragraph D(1) of this Award, shall retain his rights to and obligations to protect road and yard service assignments (including all assignments in miscellaneous and unclassified road services and all assignments in transfer, belt-line, and miscellaneous yard services) for which he is qualified, as provided by rules in effect on the day preceding the day this Award becomes effective, to the extent that such positions are available to him in his seniority district, unless and until retired, discharged for cause, or otherwise removed from the carrier's active working lists of road trainmen and yard brakemen or helpers by natural attrition; provided, that no such "protected employee" shall have any right to jobs or positions that the carrier may discontinue pursuant to the provisions of this Award if other employment in any such classes of service, for which such employee is qualified, is available

to him in his seniority district. If and when the carrier is required to create new jobs or positions for road trainmen or yard brakemen or helpers, pursuant to the provisions of this Award, such positions shall first be filled, to the extent available, by "protected employees" then filling positions which the carriers would otherwise have the right to abolish or eliminate pursuant to the provisions of this Award, before such jobs or positions may be claimed by other employees of the carrier in accordance with their seniority rights.

IV. DURATION

This Award shall continue in force for two years from the date it takes effect, unless the parties agree otherwise.

Dated: November 25, 1963

BENJAMIN AARON
Neutral Member

JAMES J. HEALY
Neutral Member

RALPH T. SEWARD
Chairman of the Arbitration Board

CONCURRING:

GUY W. KNIGHT
Carrier Member

J. E. WOLFE
Carrier Member

DISSENTING:

H. E. GILBERT
Organization Member

R. H. McDONALD
Organization Member